

## **RULE 114. TRIAL**

**(a) Trial Process.** A judge, or a magistrate where authorized, shall preside over the trials of all issues presented for decision in accordance with this chapter and the child support guidelines. The Maine Rules of Evidence shall govern trials, except that where a witness is presented as an expert on any issue, the court may, in its discretion, allow or require that a written report of the expert be offered in lieu of all or a portion of that individual's direct testimony. However, the expert must be available for cross-examination and questioning by the court and for any redirect examination on issues that are fairly raised in the cross-examination or questioning by the court. The proponent of the report shall request a prehearing conference before the trial to address all issues surrounding use of the expert's report, when the court has not previously addressed those issues.

### **(b) Final Orders by Family Law Magistrates.**

(1) *Child Support.* A magistrate may enter final orders relating to child support, including orders to establish, modify or enforce child support obligations, whether or not the matter is contested.

(2) *Other Matters.* A magistrate may enter final judgments or orders on other issues by agreement of the parties or when the matter is unopposed. A magistrate may review and approve or reject a settlement agreement. When rejecting a settlement agreement, a magistrate may refer the parties to mediation or direct them to proceed to a case management conference or trial before a judge.

(3) *Final Contested Matters.* When all parties consent, a magistrate is authorized to hear and to dispose of all elements of a Family Division matter, except adoptions, provided that the Magistrate determines that it is reasonably likely that the hearing can be completed within 3 hours.

### **Advisory Note - July 2016**

The amendment adds Rule 114(b)(3), which reflects a suggestion contained in the FDTF 2014 report. See also the July 2016 Advisory Note to Rule 107.

**Advisory Note**  
**June 2008**

Rule 114 is based on Rule 39 and FAM DIV III.E.&F. but limited to Family Division cases and recognizing the ability of both the court and magistrates, with appropriate authorization, to try Family Division cases. Subdivision (a) incorporates by reference the child support guidelines as a matter for trial decision-making. Subdivision (a) also makes one adjustment in current practice to recognize an issue that frequently recurs in Family Division cases. It states that the Maine Rules of Evidence govern trial proceedings. However, the rule also allows trial courts, if they wish to do so, to require that where expert witnesses are presented, reports of the expert witness be presented in lieu of direct testimony. The expert witness still must be available for cross-examination, questioning by the court, and limited redirect examination to issues brought up on cross-examination and not adequately addressed in the report. The purpose of this provision is to aid courts in better understanding expert presentations by having the expert's written report available to read, rather than being forced to take notes as the expert's report is given through direct examination. This alternative approach, in non-jury cases, improves both the efficiency of the proceeding and the court's understanding of the testimony and reflects an informal practice that is used today in some courts. The amendment requires the parties and the court to address this issue before the hearing.

Subdivision (b) addresses final orders that may be issued by Family Law Magistrates. It is based on FAM DIV III.F. It also recognizes that there is a pilot project permitting Family Law Magistrates to hear contested final hearings with the consent of the parties.